

# The designation of Responsible Authorities

## LINK Freshwater Task Force (FTF) response to the discussion paper by the Scottish Executive

**Scottish Environment LINK is the forum for Scotland's voluntary environment organisations representing a broad spectrum of environmental interests with the common goal of contributing to a more environmentally sustainable society.**

Thank you for the opportunity to comment on the above document. Our main concerns are summarised below.

### 1. Consultation process

The Freshwater Taskforce would like to congratulate the Scottish Executive on the style and format of this document, which presents information in a very clear and concise manner. However, while we greatly welcome the opportunity to respond, we are disappointed by the very limited distribution of this document. The Scottish Executive has been very successful in actively engaging a wide range of stakeholders in the various aspects of WEWS Act implementation, making policies in an open and transparent manner. It is therefore disappointing that this important paper has not been presented to the wider stakeholder group, nor distributed to wider audience for comments. We understand that it makes sense to initially seek the views of those who have been proposed to have a designated function. However, one of the described aims of this discussion paper is to identify potential gaps in the designation proposal. This can only be achieved with wider stakeholder input and consultation with all other public bodies. We would therefore recommend that this important document be issued for wider consultation to public bodies before laying the designation order in the Scottish Parliament later in the year. For example, the list of public bodies identified by the Scottish Executive for implementing the biodiversity duty under the Nature Conservation Act (Scotland) 2005 includes some 330 authorities, universities and government advisors.

### 3. Proposals for designation

We greatly welcome proposals to designate local authorities, Scottish Water, Scottish Natural Heritage, Forestry Commission, National Park Authorities, District Salmon Fishery Boards, British Waterways and Port Authorities as designated authorities under the WEWS Act. The designation order will give these authorities important functions, which are necessary to ensure the delivery of WFD aims and objectives. Such designation is a very important step in the delivery of good ecological status and in ensuring an integrated approach to water management in Scotland. We believe that designating responsible authorities is a positive step forward, which will deliver a wide range of benefits. However, the consequences of such designation are far-reaching and will have significant impacts on day-to-day operations of the designated authority. It is therefore essential that responsible authorities be given advice from the Scottish Executive so as to what such designation means in practice and how to best implement it. Two such measures, as mentioned

in the discussion paper, are guidance and staff training. Further clarification is required with regards to interactions between the existing planning systems and river basin management plans, especially in relation to the duties of local authorities.

#### 4. Listing all relevant enactments

Section 3 of the discussion paper lists responsible authorities and their proposed functions. It is important to note that **all public bodies** have duty under the **Nature Conservation (Scotland) Act 2004 to further the conservation of biodiversity**. This duty is an important vehicle that can deliver benefits for the implementation of Water Framework Directive and therefore should be listed as a relevant enactment for all proposed responsible authorities. The same applies to **Environmental Assessment Regulations** (Strategic Environmental Assessment), **which is currently not a listed function**.

#### 5. Designating responsible authorities

We are concerned over proposals not to designate the following authorities:

- **Water Industry Commission (WIC)**

Under the Water Services (Scotland) Act 2005, the Water Industry Commission (WIC) has duties to determine maximum charge limits within a framework of standards and objectives set by Scottish Ministers. The Water Industry Commission acts solely as an economic regulator, with its duties currently **not expanding to the promotion of sustainable development**. This creates inconsistency within the policy framework. Scottish Water's main contribution to the achievement of sustainable development is through the delivery of Ministerial objectives within the charge caps proposed by the WIC. Scottish Water can only deliver these objectives if it is given adequate funds to fulfil its core roles. Sometimes the cheapest solution to an environmental problem is not the best or the most cost-effective option in the long term. The Water Industry Commission must consider sustainability when setting charge caps for Scottish Water. The best delivery mechanism to achieve this is through **designation of WIC as a responsible authority under the WEWS Act**.

In England and Wales, the equivalent of the WIC - OFWAT has been given a duty to promote sustainable development in the new Water Act 2003 (see figure 1 below). This ensures a balanced approach to charge and investment programme settings in England and Wales. A similar approach should be sought in Scotland, since sustainability can only be achieved with a balanced approach from Scottish Ministers, Scottish Water and the regulators.

- **Water Customer Consultation Panels (WCCP)**

The five Water Customer Consultation Panels were established by the Water Industry (Scotland) Act 2002, to represent the views and interests of customers of Scottish Water. The Panels are independent of Scottish Water, and other agencies including the Water Industry Commissioner. Through meetings and contact across Scotland, each Panel engages with customers: households, businesses, representative bodies, local authorities, charitable and voluntary organisations, and key stakeholders. This provides clear understanding and evidence of customer concerns. The Panels also meet regularly with Scottish Water, the Water Industry Commissioner, and the Scottish Executive to highlight the key issues raised by customers. In relation to their role, the Panels act as an important link between public and the water industry and therefore have an important role in educating public and advising the WIC and SW of public

#### **A submission by the Freshwater Taskforce of the Scottish Environment LINK**

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views and investment priorities. They are an important vehicle for engaging with the public in WFD implementation and river basin management planning. Their designation would contribute towards helping to raise awareness of environmental and sustainable development issues in the functioning of water industry in Scotland.

**We would welcome the Scottish Executive considering the following comments:**

- Whilst we understand reasons for not designating **Fisheries Research Services (FRS)** under this discussion paper, we believe that **FRS's** functions need to be designated as part of the Scottish Executive's internal designation process.
- **Scottish Agricultural College (SAC)** is partially a public body also responsible for providing advice to the farming community. In delivering its functions as farm adviser, SAC should take into considerations the aims and objectives of the Water Framework Directive, and contribute to its delivery.
- **Scottish Enterprise** is established in terms of the Enterprise and New Towns (Scotland) Act 1990 for the purposes of furthering the development of Scotland's economy, enhancing skills and establishing self-employment, promoting Scotland's industrial efficiency and international competitiveness and furthering the improvement of the environment. Scottish Enterprise should have a responsibility for sustainable development and sustainable flood management.
- **Highlands and Islands Enterprise (HIE)** was established in 1991 in accordance with the provisions of the Enterprise and New Towns (Scotland) Act 1990 for the purpose of preparing, concerting, promoting, assisting and undertaking measures for the economic and social development of the Highlands and Islands, maintaining and enhancing skills and capacities relevant to employment, assisting people to establish themselves as self-employed and furthering improvement of the environment in the Highlands and Islands. Again, HIE should have responsibility towards delivering WFD objectives, especially in relation to sustainable flood management.
- **Maritime and Coastal Agency (MCA)**  
This Agency is responsible throughout the UK for implementing the Government's maritime safety policy. That includes co-ordinating search and rescue at sea through Her Majesty's Coastguard, and checking that ships meet UK and international safety rules. One of the core roles includes prevention of coastal pollution. Whilst MCA is a UK body, the Scottish Executive should consider its relevance to the WFD, which in Scotland extends to 3 nautical miles.
- **Drinking Water Quality Regulator for Scotland (DWQR)**  
The role of DWQR was created in 2002 under the Water Industry (Scotland) Act 2003. DWQR is responsible for enforcing the Water Supply (Water Quality) (Scotland) Regulations 2001. It acts independently of Scottish Ministers to monitor the quality of drinking water supplied by Scottish Water. Water quality data provided by the company is regularly reviewed and a programme of targeted audits takes place to review all aspects of the supply of drinking water. Where drinking water does not meet the required standard, the Regulator has powers to investigate and ensure problems are resolved. This can involve taking enforcement action. Furthermore, the Regulator also has a role in delivering the capital investment process by ensuring the necessary investment in water quality is made. This includes a commitment to ensuring the continuation of improvements

to the quality of Scotland's drinking water. In relation to its roles, the DWQR should be designated as a responsible authority.

**Figure 1: OFWAT's duty in the new Water Act 2003 to promote sustainable development**

4) For subsections (3) and (4) there is substituted-

"(3) Subject to subsection (2A) above, the Secretary of State or, as the case may be, the Authority shall exercise and perform the powers and duties mentioned in subsection (1) above in the manner which he or it considers is best calculated-

(a) to promote economy and efficiency on the part of companies holding an appointment under Chapter 1 of Part 2 of this Act in the carrying out of the functions of a relevant undertaker;

(b) to secure that no undue preference is shown, and that there is no undue discrimination in the fixing by such companies of water and drainage charges;

(c) to secure that consumers are protected as respects benefits that could be secured for them by the application in a particular manner of any of the proceeds of any disposal (whenever made) of any of such a company's protected land or of an interest or right in or over any of that land;

(d) to ensure that consumers are also protected as respects any activities of such a company which are not attributable to the exercise of functions of a relevant undertaker, or as respects any activities of any person appearing to the Secretary of State or (as the case may be) the Authority to be connected with the company, and in particular by ensuring-

(i) that any transactions are carried out at arm's length;

(ii) that the company, in relation to the exercise of its functions as a relevant undertaker, maintains and presents accounts in a suitable form and manner;

(iii) that, if the person is a licensed water supplier, its licence does not authorise it to carry on any activities in the area of the company;

**(e) to contribute to the achievement of sustainable development.**

(4) In exercising any of the powers or performing any of the duties mentioned in subsection (1) above in accordance with the preceding provisions of this section, the Secretary of State and the Authority shall have regard to the principles of best regulatory practice (including the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed)."